

MARY ANN SMITH  
Deputy Commissioner  
SEAN M. ROONEY  
Assistant Chief Counsel  
JUDY L. HARTLEY (State Bar No. 110628)  
Senior Counsel  
Department of Business Oversight  
320 West 4<sup>th</sup> Street, Ste. 750  
Los Angeles, California 90013-2344  
Telephone: (213) 576-7604  
Facsimile: (213) 576-7181

Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
OF THE STATE OF CALIFORNIA

In the Matter of:	)	OAH NO.: 2017040545
	)	
THE COMMISSIONER OF BUSINESS	)	CRMLA LICENSE No.: 413-0382
OVERSIGHT,	)	
	)	CFLA LICENSE No.: 603-H996
Complainant,	)	
	)	SETTLEMENT AGREEMENT
v.	)	
	)	
AMWEST FUNDING CORP.,	)	
	)	
Respondent.	)	

This Settlement Agreement (Agreement) is entered into between Respondent AmWest Funding Corp. (AmWest) and Complainant the Commissioner of Business Oversight (Commissioner), and is made with respect to the following facts:

**RECITALS**

- A. AmWest is a corporation in good standing, duly formed and existing pursuant to the laws of the State of California, and authorized to conduct business in the State of California.
- B. AmWest is a residential mortgage lender and loan servicer licensed by the Commissioner pursuant to the California Residential Mortgage Lending Act (CRMLA) (Fin. Code §50000 et seq.). AmWest has its principal place of business located at Six Pointe Drive, Suite 150,

**SETTLEMENT AGREEMENT**

1 Brea, California 92821. AmWest currently has one branch office location under its CRMLA license  
2 located in Georgia. AmWest employs mortgage loan originators in its CRMLA business.

3 C. AmWest is also licensed by the Commissioner as a finance lender and broker  
4 pursuant to the California Finance Lenders Law (CFL) (Fin. Code §22000 et seq.). AmWest has  
5 its principal place of business under the CFL also located at Six Pointe Drive, Suite 150, Brea,  
6 California 92821.

7 D. The Department of Business Oversight (Department), through the Commissioner, has  
8 jurisdiction over the licensing and regulation of persons and entities engaged in the business of  
9 lending and/or servicing pursuant to the CRMLA and lending and/or brokering pursuant to the  
10 CFL, including mortgage loan originators.

11 E. On February 3, 2017, AmWest was personally served by the Commissioner with a  
12 Notice of Intention to Issue Orders Suspending Residential Mortgage Lender and/or /Servicer  
13 Licenses and Finance Lender and/or Broker Licenses and to Levy Penalties, Accusation and  
14 accompanying documents dated January 30, 2017. AmWest has filed a Notice of Defense with the  
15 Commissioner regarding the Accusation.

16 F. On February 3, 2017, AmWest was also personally served by the Commissioner with  
17 an Order to Discontinue Violations Pursuant to Financial Code Section 50321 and Statement of  
18 Facts In Support of Order to Discontinue Violations Pursuant to Financial Code Section 50321 and  
19 Notice of Intent to Make Order Final dated January 30, 2017 (Order to Discontinue Violations) and  
20 an Order to Refund Excessive Per Diem Interest Charges Pursuant to Financial Code Section 50504  
21 dated January 30, 2017 (Order to Refund)(collectively Orders). AmWest has filed requests for  
22 hearing with the Commissioner regarding the Orders.

23 G. The Accusation and Orders are currently scheduled for trial before the Los Angeles  
24 Office of Administrative Hearings for November 13 and 14, 2017.

25 H. The Commissioner hereby acknowledges that AmWest has submitted information  
26 demonstrating that it has adopted policies and procedures addressing the issues described in the  
27 Accusation and Orders.  
28

I. It is the intention and desire of the parties to resolve this matter without the necessity of a hearing and/or other litigation.

NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set forth herein, the parties agree as follows:

### TERMS AND CONDITIONS

1. Purpose. This Agreement is entered into for the purpose of judicial economy and expediency, and to avoid the expense of a hearing, and possible further court proceedings.

2. Waiver of Hearing Rights. AmWest acknowledges its right to an administrative hearing under the CRMLA and/or the CFLL in connection with the Accusation and/or Orders and hereby waives that right to a hearing, and to any reconsideration, appeal, or other rights which may be afforded pursuant to the CRMLA, the CFLL, the California Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law in connection with these matters.

3. Final Orders. AmWest hereby agrees that the Orders described in Paragraph F above are hereby deemed final orders.

4. Administrative Penalty. AmWest agrees to pay to the Commissioner the sum of \$339,000.00 in administrative penalties with an initial payment of \$150,000.00 to be paid within 30 days of the effective date of this Agreement as that date is defined in Paragraph 23, followed by six monthly installments of \$31,500.00. Each subsequent monthly payment shall be due 30 days after the due date of the previous payment. The payments shall be made by cashiers' check payable to the Department of Business Oversight and shall be sent to the Department, attention, Accounting-Litigation, 1515 K Street, Suite 200, Sacramento, CA 95814-4052.

5. July 1, 2015 through July 31, 2017 CPA Audit. AmWest must conduct an audit, by and through an independent certified public accountant, in accordance with procedures agreed upon by the parties, of per diem interest charges for all California loans originated from July 1, 2015 through July 31, 2017 where disbursement occurred on a Monday or a day following a bank holiday. AmWest, by and through its independent certified public accountant, will submit to the Department the results of the audit (audit report) within 90 days of the effective date of this Agreement as that date is defined in Paragraph 23. The audit report must be submitted in Microsoft Excel format that

contains the total number of qualifying loans made during this period and the number of loans with per diem overcharges, and for each loan, the report shall list the borrower loan number, name, address, loan amount, loan date, interest rate, disbursement date, date per diem interest commenced, per diem charged, daily per diem interest amount, number of days per diem interest charged, number of days per diem interest overcharged, overcharge amount (if applicable), date of refund (if applicable), and proof of refund (if applicable). AmWest further agrees that it shall pay an administrative penalty to the Commissioner, upon submission of the audit report, equal to \$200.00 for each per diem interest overcharge discovered during the audit unless such overcharge was refunded to the borrower within 30 days of loan funding.

6. Quarterly Audits. AmWest also agrees to conduct quarterly audits, by and through an independent certified public accountant, in accordance with procedures agreed upon by the parties, of per diem interest charges for all California loans where disbursement occurred on a Monday or a day following a bank holiday for a period of one year commencing on August 1, 2017. Each quarterly audit must cover all qualifying California loans originated during that quarter. AmWest, by and through its independent certified public accountant, will submit to the Department the results of each quarterly audit (quarterly audit report) within 60 days of the completion of each quarter. The quarterly audit report would contain the same or similar fields as in the audit report discussed in paragraph 5 above. AmWest further agrees that it shall pay an administrative penalty to the Commissioner, upon submission of the quarterly audit report(s), equal to \$200.00 for each per diem interest overcharge discovered during the quarterly audit(s) unless such overcharge was refunded to the borrower within 30 days of loan funding.

7. Payment of Refunds: Borrower refunds made pursuant to Paragraphs 5 and 6 shall include interest at the rate of 10 percent per annum from the date of overcharge, and shall be mailed to the last known address of each borrower prior to submission of the applicable report to the Commissioner. Borrower refunds made pursuant to this Agreement shall be accompanied by a cover letter that states: "As a result of an examination by the Department of Business Oversight, a refund or adjustment in the amount of \$XXXX is being made for your benefit. If you have any questions concerning this refund, please contact (lender) at (800) XXX-XXXX."

1           8.     Outstanding Refunds. AmWest shall be responsible for ensuring that any outstanding  
2 refund payment owed to any borrower identified in the audit and quarterly audit reports described in  
3 Paragraphs 5 and 6 above shall be escheated to the State of California pursuant to the provisions of  
4 the California Unclaimed Property Law (Code Civ. Proc., § 1500 et seq.).

5           9.     NMLS Renewal. The Commissioner hereby agrees to renew AmWest in the National  
6 Mortgage Licensing System through 2017 within five business days of the effective date of this  
7 Agreement as that date is defined in Paragraph 23.

8           10.    Effect of Agreement on Licenses. In consideration of the information provided to the  
9 Commissioner by AmWest as described in Paragraph H above and AMWest's agreement to the  
10 entry of the finality of the Orders and payment of penalties as provided for in Paragraphs 3 and 4  
11 above, the Commissioner hereby agrees that, except as otherwise set forth in this Agreement, she  
12 shall not suspend and/or revoke the residential mortgage lender and loan servicer licenses or finance  
13 lender and/or broker licenses of AmWest. Accordingly, this Agreement does not affect the licensing  
14 status of AmWest.

15           11.    Information Willfully Withheld. This Agreement may be revoked and the  
16 Commissioner may pursue any and all remedies available under law against AmWest, if the  
17 Commissioner later finds out that AmWest knowingly or willfully withheld information used and  
18 relied upon in this Agreement.

19           12.    Failure to Comply with Agreement. AmWest agrees that if it fails to comply with the  
20 terms of this Agreement within five business days after written notice of demand, the Commissioner  
21 may, in addition to all other available remedies under the CRMLA and/or CFLL, summarily suspend  
22 the CRMLA and/or CFLL licenses of AmWest until AmWest is in compliance. AmWest waives  
23 any notice and hearing rights to contest such summary suspensions which may be afforded under the  
24 CRMLA, the CFLL, the California Administrative Procedure Act, the California Code of Civil  
25 Procedure, or any other provision of law in connection therewith.

26           13.    Binding. This Agreement is binding on all heirs, assigns and/or successors in interest.  
27  
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1           14.     Third Party Actions. This Agreement does not create any private rights or remedies  
2 against AmWest, create any liability for AmWest or limit defenses of AmWest for any person or  
3 entity not a party to this Agreement.

4           15.     Full and Final Settlement. The parties hereby acknowledge and agree that this  
5 Agreement is intended to constitute a full, final and complete resolution of the Accusation and  
6 Orders and that no further proceedings or actions will be brought by the Commissioner in connection  
7 with these matters either under the CRMLA, CFLL, or any other provision of law, to include per  
8 diem interest charges on all California loans originated through June 30, 2015, excepting therefrom  
9 any proceeding or action if such proceeding or action is based upon facts not presently known to the  
10 Commissioner and which were actively concealed from the Commissioner by AmWest.

11           16.     Commissioner's Duties. The parties further acknowledge and agree that nothing  
12 contained in this Agreement shall operate to limit the Commissioner's ability to assist any other  
13 agency, (city, county, state or federal) with any prosecution, administrative, civil or criminal,  
14 brought by any such agency against AmWest or any other person based upon any of the activities  
15 alleged in these matters or otherwise.

16           17.     Independent Legal Advice. Each of the parties represents, warrants, and agrees that it  
17 has received independent advice from its attorney(s) and/or representatives with respect to the  
18 advisability of executing this Agreement.

19           18.     Reliance. Each of the parties represents, warrants, and agrees that in executing this  
20 Agreement it has relied solely on the statements set forth herein and the advice of its own counsel  
21 and/or representative. Each of the parties further represents, warrants, and agrees that in executing  
22 this Agreement it has placed no reliance on any statement, representation, or promise of any other  
23 party, or any other person or entity not expressly set forth herein, or upon the failure of any party or  
24 any other person or entity to make any statement, representation or disclosure of anything  
25 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in  
26 any way fraudulently induced to execute this Agreement; and (2) to preclude the introduction of  
27 parol evidence to vary, interpret, supplement, or contradict the terms of this Agreement.  
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1           19.     Full Integration. This Agreement is the final written expression and the complete and  
2 exclusive statement of all the agreements, conditions, promises, representations, and covenants  
3 between the parties with respect to the subject matter hereof, and supersedes all prior or  
4 contemporaneous agreements, negotiations, representations, understandings, and discussions  
5 between and among the parties, their respective representatives, and any other person or entity, with  
6 respect to the subject matter covered hereby.

7           20.     No Presumption from Drafting. In that the parties have had the opportunity to draft,  
8 review and edit the language of this Agreement, no presumption for or against any party arising out  
9 of drafting all or any part of this Agreement will be applied in any action relating to, connected, to,  
10 or involving this Agreement. Accordingly, the parties waive the benefit of California Civil Code  
11 section 1654 and any successor or amended statute, providing that in cases of uncertainty, language  
12 of a contract should be interpreted most strongly against the party who caused the uncertainty to  
13 exist.

14           21.     Waiver, Modification, and Qualified Integration. The waiver of any provision of this  
15 Agreement shall not operate to waive any other provision set forth herein. No waiver, amendment,  
16 or modification of this Agreement shall be valid or binding to any extent unless it is in writing and  
17 signed by all of the parties affected by it.

18           22.     Headings and Governing Law. The headings to the paragraphs of this Agreement are  
19 inserted for convenience only and will not be deemed a part hereof or affect the construction or  
20 interpretation of the provisions hereof. This Agreement shall be construed and enforced in  
21 accordance with and governed by California law.

22           23.     Effective Date. This Agreement shall not become effective until signed by all parties  
23 and a fully executed copy is delivered by counsel for the Commissioner via email to counsel for  
24 AmWest.

25           24.     Counterparts. This Agreement may be executed in one or more separate counterparts,  
26 each of which when so executed, shall be deemed an original. Such counterparts shall together  
27 constitute a single document.  
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1           25.    Notice. Any notice/report required under this Agreement shall be addressed as  
2 follows:

3                   To AmWest Funding Corp.: Jonathan D. Jaffe, Esq.  
4   Mayer Brown LLP  
5   Two Palo Alto Square, Suite 300  
6   3000 El Camino Real  
7   Palo Alto, California 94306-2112  
8   [jjaffe@mayerbrown.com](mailto:jjaffe@mayerbrown.com)

9                   To the Commissioner:       Judy L. Hartley, Esq.  
10   Senior Counsel  
11   Department of Business Oversight  
12   320 W. 4<sup>th</sup> Street, Suite 750  
13   Los Angeles, California 90013-2344  
14   [judy.hartley@dbo.ca.gov](mailto:judy.hartley@dbo.ca.gov)

15           26.    Public Record. AmWest acknowledges that this Agreement is a public record.

16           27.    Settlement Authority. Each signatory hereto covenants that he/she possesses all  
17 necessary capacity and authority to sign and enter into this Agreement.

18 Dated: 10/10/17                               JAN LYNN OWEN  
19   Commissioner of Business Oversight

20 By \_\_\_\_\_  
21 MARY ANN SMITH  
22 Deputy Commissioner

23 Dated: 10/9/17                               AMWEST FUNDING CORP.

24 By \_\_\_\_\_  
25 RYAN KIM, President

26 APPROVED AS TO FORM:

27 MAYER BROWN LLP

28 By \_\_\_\_\_  
JONATHAN D. JAFFE, ESQ. attorney for  
AMWEST FUNDING CORP.

Commissioner of Business Oversight

By \_\_\_\_\_  
JUDY L. HARTLEY, ESQ., Senior Counsel